

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KELLY CHRISTINE WASHINGTON, et al.,
Plaintiff(s),
v.
WESTLAND LIBERTY VILLAGE LLC, et
al.,
Defendant(s).

Case No. 2:22-cv-01017-JAD-NJK

REPORT AND RECOMMENDATION

On June 29, 2022, the Court ordered Plaintiffs to show cause why this case should not be dismissed for lack of subject matter jurisdiction. Docket No. 3.¹ The deadline to respond was set for July 14, 2022. *Id.* No response has been filed.

The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

Plaintiffs’ complaint addresses a landlord-tenant dispute from which Plaintiffs attempt to bring a claim pursuant to 42 U.S.C. § 1983 for alleged constitutional violations. *See, e.g.*, Docket

¹ As Plaintiffs are proceeding *pro se*, the Court construes their filings liberally. *See, e.g.*, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

No. 1-1 at 4. Such a claim is proper only when the defendants acted under the color of state law (*i.e.*, when the defendants are “state actors”). *West v. Atkins*, 487 U.S. 42, 48-50 (1988). Plaintiffs’ complaint does not allege that defendants are state actors, nor does it appear that there would be a basis for making that allegation since Plaintiffs are suing the company from which they rent and its employees. Hence, the complaint does not state a claim under § 1983 and no showing has been made that federal question jurisdiction is otherwise present in this matter.²

As Plaintiffs and some Defendants are Nevada residents, *e.g.*, Docket No. 1-1 at 2, diversity jurisdiction is also lacking, *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (requiring “complete diversity”).

Accordingly, the undersigned **RECOMMENDS** that this case be dismissed for lack of subject matter jurisdiction.

Dated: July 19, 2022



Nancy J. Koppe
United States Magistrate Judge

NOTICE

This report and recommendation is submitted to the United States District Judge assigned to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation must file a written objection supported by points and authorities within fourteen days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court’s order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

² Although the complaint references the Fair Housing Act, Docket No. 1-1 at 7, mere reference to a federal law does not establish federal question jurisdiction, *e.g.*, *Edwards v. BQ Resorts, LLC*, 2016 WL 6905378, at *2 (D. Nev. Nov. 23, 2016) (Dorsey, J.).